had established at the institution of the action an unassailable possessory title to the lands.

The result is unfortunate for the plaintiffs. I could only repeat the words of Cockburn C.J. cited above. The claim is dismissed with costs.

Claim dismissed.

Solicitors: *S. Thillaimuthu; Ong Huck Lim & Co.*

RODRIGUES v. ROBERT WEE & CO.

[O.C.J. (Winslow J.) March 29, 1968]
[Singapore — Suit No. 504 of 1966]

Contract — Breach of — Sharebrokers — Wrongful delivery of shares — Assessment of damages.

The plaintiffs bought 2,000 shares from Alex Goei a stockbroker sometime in 1962. The shares were to be delivered to him in May 1962 but they were never so delivered — in fact they were wrongfully sold at a lower price in June 1962. From the evidence it was clear that both Alex Goei and the plaintiff were to blame for the delay which resulted in the plaintiff discovering in 1964 that his shares were sold in 1962. Subsequently the defendants took over the business of Alex Goei and as a result of this taking over the defendants were not in a position to know how their business transactions stood *vis-a-vis* their clients. In an action for damages for breach of contract,

Held: in view of the inconclusive nature of the authorities and in the circumstances of the case damages for breach should be arrived at a figure roughly about half way between the contract price and the highest peak before the action i.e. at 60 cents per share.

Cases referred to:—

(1) *Shaw* v. *Holland* (1846), 15 M. & W. 136.

(2) *Sri Lanka Omnibus Co.* v. *Perera* [1952] A.C. 76.

(3) *Sachs* v. *Miklos* [1948] 2 K.B. 22.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

A. S. K. Wee for the defendants.

Cur. Adv. Vult.

Winslow J.: It is well-recognised that the object in assessing damages for breach of contract is to arrive, as nearly as possible, at the real loss sustained by a plaintiff. The difficulty arises, however, when, as in this case, there has been a wrongful delivery to another person, in addition to mere non-delivery on the due date, *i.e.*, one month after the contract date.

The plaintiff only came to know, in November 1964, that the shares he had bought and which were to be delivered in May 1962 had been wrongfully sold, *albeit* at a lower price, in June 1962 and complaint is made, not entirely without justification, that he has himself been tardy, and that he should not have inflamed damages but tried to mitigate them by being more alert in the matter. As against that, the accounts kept by the defendants' predecessors were in a mess and I have already found that they did not inform him that the shares were ready for delivery or even send him a debit note when they should have done so. The plaintiff, on the other hand, seemed to show little interest in this particular contract note, which he held. As he was speculating heavily in shares, at that time, he probably forgot all about them and placed the onus entirely on the defendants to remind him.

In my opinion, both sides were to blame for the delay which resulted in the plaintiff's discovering only in 1964 that his shares had been sold to someone else. Moreover, Alex Goei also contributed to the delay by his own conduct. Subsequently the defendants who took over the business were placed in the unhappy position of not knowing exactly how their business transactions stood *vis-a-vis* their clients because Alex Goei himself left the firm in 1962 soon after the wrongful sale of these shares to Sena & Co., having created the mess which he left behind for them to sort out.

In assessing damages I have to bear in mind that although the plaintiff has not yet paid for these shares and that they had gone down in price by the time the delivery date arrived, he had been debited with the contract price in June 1962.

If this had been a simple case of non-delivery, the case of *Shaw* v. *Holland* (1) would probably apply. There it was held that, by analogy to an action for the non-delivery of goods, the normal measure of damages would be the difference between the contract price and the market price at the time of delivery. It has been said that if the market value falls before the due date to a level lower than the contract price the plaintiff would normally be wise not to pursue his remedies, as a complete answer to him would be that, as he has the money in his own hands, he would suffer no loss because he could buy the shares elsewhere if not indeed at a lower price than that indicated in his contract. That may well be so in the case of an isolated transaction where the plaintiff has no account at all with the seller.

As against this principle, there is another line of cases of which *Sri Lanka Omnibus Co.* v. *Perera* (2) is an example. But that, of course, was a case in which, on its facts, specific performance was decreed and the buyer was held to be entitled to recover the dividends between the delivery date and the date on which the shares were actually allotted to him, together with interest. In the present case specific performance could not be decreed because the particular shares had been sold.

Where however the market value has fluctuated both up and down between breach, knowledge and judgment, there is little clear authority.

However, in *Mayne & Mcgregor* on Damages (12th Edition) at paragraph 633, it is submitted that the best rule would give the highest intermediate value between knowledge and judgment. Support for this is said to be derived from *Sachs* v. *Miklos* [3] (a tort case) where it was held that the plaintiff should be entitled to the highest value to which the market had climbed before the action because he might have wished to sell the goods at the market peak.

In view of the inconclusive nature of the authorities, one is almost left at large on how the loss to the buyer is to be assessed on the particular facts before me.

To give him nothing at all would be absurd, on the facts, and to award him the highest intermediate value before action brought, or the accruing dividends, would also be somewhat absurd because having never literally paid for these shares there was nothing to prevent him from buying them elsewhere especially as the price was going down. As against that it must be remembered that he was a client of long standing who had a right to expect some measure of loyalty and service from Alex Goei's firm with which he had an account. That account was in credit. The firm's own ledger account (Ex. D2) shows that it debited his account with the contract price of these shares thereby inviting the conclusion that, so far as the firm was concerned, these shares had been transferred.

In all the circumstances I am of the view that, in fairness to both parties, damages for the breach should be assessed at a figure roughly about half-way between the contract price and the highest peak before the action, *i.e.*, at, say, 60 cents per share.

I very much regret having taken longer than I usually do in reaching a decision. I had hopes of an amicable solution but that was not to be. For this, the dearth of clear-cut authority on the subject is undoubtedly a major contributing factor.

Damages in respect of 2,000 shares therefore works out, on that basis, at $1,200 to the plaintiff and judgment will be entered accordingly.

Order accordingly.

Solicitors: *Hilborne & Co.; A. S. K. Wee.*

RE KWONG LEE CO. LTD.

[O.C.J. (Chang Min Tat J.) April 18, 1968]
[Ipoh — Companies Winding-up No. 1 of 1962]

Companies — Company in voluntary liquidation — Assets not sold five years after decision to liquidate — Whether profits or gains from assets subject to development tax — Companies Ordinance, 1940.

Income Tax — Development tax — Income Tax Ordinance, 1947, ss. 9, 10 and 38A.

This was an application by the liquidator of the Kwong Lee Co. Ltd. (in voluntary liquidation since July 1962) for directions whether the liquidator should pay the sum of $500 to the Comptroller of Income Tax on account of development tax payable for the year of assessment 1967 in respect of a house (one of the assets of the company) which had not been sold in order that time might run against the chargee of the land and house.

Held: so long as the liquidator was trading within the meaning of the Companies Ordinance, the gain or profits from the trade or business would be taxable under section 10 of the Income Tax Ordinance. The development tax was therefore payable on the property belonging to the company even though it was in voluntary liquidation.

Cases referred to:—

(1) *In Re International Marine Hydropathic Co.* (1885), 28 Ch. D. 470, C.A.

(2) *In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640.

(3) *In re National Arms and Ammunition Co.* (1885), 28 Ch. D. 474, C.A.

(4) *In re Blazer Fire Lighter Ltd.* [1895] 1 Ch. 402.

(5) *In re Oak Pits Colliery Co.* (1882), 21 Ch. D. 322.

SUMMONS-IN-CHAMBERS.

N. Sharma for the applicant.

Abdul Hamid bin Hassan (Examiner, Inland Revenue Department, Ipoh) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an application by the liquidator of Kwong Lee Co. Ltd. (in voluntary liquidation) made by way of summons-in-chambers for directions whether the applicant should pay the sum of $500 to the Comptroller of Income Tax on account of development tax.

In order to understand how this question arose, it may be necessary to trace the history of the liquidation in this case. On the 17th July, 1962, the company resolved at an extra-ordinary general meeting to wind-up voluntarily. On the same day, a meeting of the creditors of the company was held and it accepted the appointment of the liquidator appointed by the company as liquidator of the company. A question then arose whether the liquidation of the company should continue to be in voluntary liquidation or under the supervision of the court, and this question was decided on the 10th October, 1962, when the court ordered that the voluntary liquidation of Kwong Lee Co. Ltd. be continued but